

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-519V
(not to be published)

KATHY BELL,
Petitioner,
v.
SECRETARY OF HEALTH AND
HUMAN SERVICES,
Respondent.

*
*
* Special Master Katherine E. Oler
*
*
* Filed: February 1, 2023
*
*
* Involuntary Dismissal; Failure to Comply
* with Court Orders; Failure to Prosecute;
* Rule 21(b).
*
*

**DECISION DISMISSING CASE FOR FAILURE TO COMPLY WITH COURT ORDERS
AND FAILURE TO PROSECUTE¹**

I. Procedural History

On January 11, 2021, Kathy Bell (“Petitioner”) filed a petition for compensation in the National Vaccine Injury Compensation Program (the “Vaccine Program”)² alleging that the flu vaccination she received on January 7, 2020 caused her to develop a shoulder injury related to vaccine administration (“SIRVA”) resulting in chronic pain in her left shoulder and arm, or in the alternative, a significant aggravation of an underlying immunologic, neurologic, or genetic

¹ Although this Decision has been formally designated “not to be published,” it will nevertheless be posted on the Court of Federal Claims’s website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Decision will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the Decision in its present form will be available. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) (“Vaccine Act” or “the Act”). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

disorder resulting in the development of pain and decreased range of motion in her left shoulder and arm. Pet. at 1, ECF No. 1.

Petitioner filed multiple motions for an extension of time, totaling 243 days. *See* ECF Nos. 7, 8, 9, 10, 12. On October 15, 2021, Petitioner's former counsel, Mr. Glen Sturtevant Jr., spoke with an OSM Staff Attorney about being unable to contact Petitioner. *See* Informal Telephonic and Email Communication Remark on 10/27/2021. Mr. Sturtevant also indicated to the OSM Staff Attorney his desire to withdraw as attorney from this case. *See id.*

On November 12, 2021, Mr. Sturtevant filed a status report detailing his efforts to try to contact Petitioner. ECF No. 15. These efforts included:

- An email on January 27, 2021
- A telephone call on February 3, 2021
- An email on February 11, 2021
- An email on February 24, 2021
- An email on March 3, 2021
- A telephone call on March 12, 2021
- A telephone call on March 24, 2021
- A telephone call on April 8, 2021
- An email on April 14, 2021
- A letter via certified mail on April 15, 2021
- A telephone call and email on October 12, 2021

See id. Mr. Sturtevant received no communication from Petitioner. *Id.*

On February 17, 2022, Mr. Sturtevant filed a Motion to Withdraw as Attorney. ECF No. 21. Mr. Sturtevant also stated that he has not received a response from Petitioner for over a year. *See id.*

On June 15, 2022, an order was issued directing Mr. Sturtevant to give notice to Petitioner of his Motion to Withdraw and file proof that he has done so. ECF No. 22.

On August 1, 2022, Mr. Sturtevant filed Ex. 1, which included a letter to Ms. Bell, the Motion to Withdraw, and the Court's June 15, 2022 Order, which were emailed to Ms. Bell and also mailed to her via first-class mail and certified mail. Ex. 1. Mr. Sturtevant also filed a certified mail return receipt card. Ex. 2. Mr. Sturtevant filed a status report including Petitioner's current address and phone number. ECF No. 24.

On August 16, 2022, Mr. Sturtevant's motion to withdraw as attorney was granted. ECF No. 25. This case was assigned to me on that same date. ECF No. 28.

On August 17, 2022, I issued an Order to Show Cause, in which Petitioner was ordered to file a status report indicating whether she would like to continue prosecution of her claim by September 16, 2022. ECF No. 30. I informed Petitioner that her failure to file a status report would be interpreted as a failure to prosecute this claim and her petition would be dismissed.

September 16, 2022 passed with no filings from Petitioner. To date, Petitioner has not filed any document indicating her desire to continue with the prosecution of her claim.

II. Conclusion

Vaccine Rule 21(b)(1) provides that a “special master or the court may dismiss a petition or any claim therein for failure of the petitioner to prosecute or comply with these rules or any order of the special master or the court.” It is Petitioner’s obligation to follow court orders. Failure to follow court orders, as well as failure to file status reports or other required documents, can result in dismissal of Petitioner’s claim. *Tsekouras v. Sec’y of Health & Hum. Servs.*, 26 Cl. Ct. 439 (1992), 991 F.2d 810 (Fed. Cir. 1993) *aff’d per curiam without opin.*; *Sapharas v. Sec’y of Health & Hum. Servs.*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b). Petitioner has failed to file any medical records and has not communicated with chambers or her former counsel since 2021.

ACCORDINGLY, IT IS ORDERED THAT,

The petition is hereby **DISMISSED** for failure to follow court orders and failure to prosecute. The Clerk shall enter judgment accordingly.

A copy of this Decision shall be sent to Petitioner via U.S. Mail at the following address:

**Kathy Bell
10572 W. Fountain Avenue
Apt. 60
Milwaukee, WI 53224**

Any questions regarding this Decision may be directed to my law clerk, Sydney Lee, by telephone at 202-357-6347, or by email at Sydney_Lee@cfc.uscourts.gov.

IT IS SO ORDERED.

s/ Katherine E. Oler
Katherine E. Oler
Special Master